

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BEENVERIFIED, INC.

Plaintiff

v.

PLATINUM DATA VERIFI LLC d/b/a
SEEK VERIFY, SEEKVERIFY LLC,
MR. JAROSLAV HEVERY, MR. JUSTIN
DEWOLF, and ONE OR MORE
JOHN/JANE DOE(S)

Defendant

Civil Action No. 18-2145

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT, VIOLATION OF THE
DIGITAL MILLENNIUM COPYRIGHT
ACT; BREACH OF CONTRACT;
UNJUST ENRICHMENT; COMMON
LAW FRAUD; COMPUTER FRAUD;
STATE AND FEDERAL TRADEMARK
INFRINGEMENT; DILUTION; TRADE
DRESS INFRINGEMENT; FALSE
DESIGNATION OF ORIGIN; FALSE
ADVERTISING; DECEPTIVE TRADE
PRACTICES; UNFAIR COMPETITION;
TRADEMARK CANCELLATION**

JURY TRIAL DEMANDED

BeenVerified, Inc. (hereinafter “Plaintiff” or “BeenVerified”) brings forth this action against Platinum Data Verifi LLC d/b/a SEEK VERIFY, SEEKVERIFY LLC, Mr. Jaroslav Hevery, Mr. Justin DeWolf, and One or More John/Jane Doe(s) (hereinafter collectively referred to as “Defendants” or “SeekVerify”) and complains and alleges as follows:

INTRODUCTION

1. This is an action for federal copyright infringement under 17 U.S.C. § 101 *et seq*, violation of the Digital Millennium Copyright Act under 17 U.S.C. § 1201(a) and 1202(a), breach of contract, unjust enrichment, common law fraud, violation of New York Consolidated Laws, Penal Law – PEN § 156 *et seq* Penal Code, violation of the Computer Fraud and Abuse Act (“CFAA”) 18 U.S.C. §1030, federal trademark infringement, trade dress infringement and false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1051 *et seq*; common

law trademark infringement under the laws of New York; and unfair competition under the laws of New York against SeekVerify.

PARTIES

2. Plaintiff BeenVerified is a Delaware corporation having a place of business at 48 West 38th St, 8th Floor, New York, NY 10018.

3. Upon information and belief, Defendant Platinum Data Verifi, LLC d/b/a Seek Verify (“PDV”) was organized under the laws of the state of New York in March 2016 as a limited liability company having a place of business at Suite 401, #7668, 150 Motor Parkway, Hauppauge, New York 11788.

4. Upon information and belief, Defendant SEEKVERIFY LLC (“SV”) was organized under the laws of the state of New York in September 2016 as a limited liability company having a place of business at 348 Goodman Street, Rochester, New York 14607.

5. Upon information and belief, Defendant Jaroslav Hevery (hereinafter “Hevery”) is an individual with an address at 300 Miller Court Orinda, CA 94563 and, Hevery is a member, principal, owner, investor, or employee of the New York entities Platinum Data Verify, LLC and SEEKVERIFY LLC and is doing business under the entities. Hevery is the listed owner and registrant of the infringing domain SEEKVERIFY.COM and website.

6. Upon information and belief, Defendant Justin DeWolf (hereinafter “DeWolf”) is an individual with an address at 44 Little Briggins Circle, Fairport, NY 14450 and, DeWolf is a principal, owner, investor, or employee of the New York entities Platinum Data Verify, LLC and SEEKVERIFY LLC and is doing business under the entities.

7. Hevery, DeWolf, PDV and/or SV or its agents or affiliated companies operate the website www.seekverify.com.

8. Mr. Jaroslav Hevery, Mr. Justin DeWolf, and one or More John/Jane Doe(s) includes individuals or entities that are principals, owners, investors, employees, agents, or corporate parent or affiliated entities of PDV and/or SV, and these John/Jane Doe(s) have engaged, directed and/or contributed to the wrongful and fraudulent conduct complained herein and have also participated in and/or conspired to perpetrate the criminal and fraudulent actions complained herein such that such individuals have forfeited the protections of a limited liability company and can be made to answer individually for their actions.

9. Plaintiff reserves the right to add additional defendants as their identities become known.

JURISDICTION AND VENUE

10. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331, and 1338 over the CFAA, copyright and Lanham Act claims because the action alleges *inter alia* violations of federal statutes; and the Court has jurisdiction pursuant to 28 U.S.C. §§ 1338(b) and 1367 over the state law claims because they arise out of the same nucleus of operative fact and are so related to the federal cause of action that they form the same case or controversy.

11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391, 1400(b) because a substantial part of the events giving rise to the claims raised in the lawsuit occurred in this judicial district, and because Defendants conduct business in this district and Defendants' actions have injured BeenVerified whose headquarters are in this judicial district and Defendants are subject to jurisdiction in this district.

12. Upon information and belief, this Court has jurisdiction over each and every one of the Defendants because Defendants committed acts of trademark infringement and copyright infringement in this district, causing injury to Plaintiff in this state and district; and upon

information and belief, Defendants have organized its LLCs and regularly transacts business and have purposely targeted its activities in this state and district, including the advertising and sale of the products/services at issue through the Internet to New York residents and New York entities. In addition, Defendants have purposely directed their actions to unlawfully take and reproduce Plaintiff's website and underlying code and used it as their own, and have sold the flow and underlying code to competitor(s), in violation of copyright law as well as state and federal anti-computer fraud/theft laws and unfair competition laws.

13. Personal Jurisdiction over PDV is found in New York at least because PDV is incorporated and has offices in New York.

14. Personal Jurisdiction over SV is found in New York at least because SV is incorporated and has offices in New York.

15. Personal Jurisdiction over Mr. Jaroslav Hevery, Mr. Justin DeWolf and the Jane/John Doe(s) may be found in New York because such entities/individuals have engaged in, directed or contributed to the wrongful conduct complained herein and continue to direct PDV and/or SV to wrongfully and fraudulently use BeenVerified website and code from their current locations and because Messrs Hevery and DeWolf own, occupy, lease or otherwise possess property in New York.

16. Defendants have purposely availed themselves to this state and this district at least because they have promoted the highly interactive website www.seekverify.com to consumers in this state and district.

FACTUAL BACKGROUND

17. Plaintiff BeenVerified is a leading source of background information services and search including a people finder, phone lookup, and public and criminal records search.

BeenVerified provides this information and its services across the United States through www.beenverified.com to its consumers.

18. BeenVerified has developed a sophisticated computer program and website along with associated website design, flow and original and copyrighted content in order to market, promote and deliver its services to customers.

19. BeenVerified has engaged in extensive research and costs to design an effective website for generating revenue, including page text, headlines, sub-headlines, page designs and layouts, photographs and a sequence of pages viewed as a user performs searches for information.

20. Although BeenVerified's website has evolved over time, the website has been continuously available on the internet since approximately 2007.

21. As a result of BeenVerified's research and design work, its website is unique in the background information services market.

22. BeenVerified's website also includes Terms & Conditions which are agreed to by each user by use of the site. The current Terms & Conditions are found at <https://www.beenverified.com/faq/terms-conditions/> ("Terms & Conditions") and state they were last updated March 24, 2015. A copy of the terms are found at Exhibit A.

23. The Terms & Conditions state that users of BeenVerified's website agree not to *inter alia*:

5. Directly or indirectly reproduce, create, compile, or incorporate any part of the Site including, but not limited to, Content, BeenVerified Checks, and Member Services, into any database, collection, compilation, directory, or information retrieval system, electronic or otherwise;

6. Use, copy, reproduce, record, retransmit, emulate, clone, sell, rent, lease, decompile, disassemble, reverse engineer, broadcast, distribute, publish, upload, post, publicly display, perform, digitize, compile, or

translate any part of the Site, Content, BeenVerified Checks, Member Services, or other material posted to or made available by or through the Site for any commercial purpose or for any purpose that is competitive, in BeenVerified's sole discretion, to BeenVerified;

7. Access the Site through any automated or manual process for the purpose of monitoring the Site's performance, functionality, or availability for any commercial purpose;

8. Access, retrieve any data from, or otherwise perform any other activities on or through the Site using any type of software or other automated process (e.g., scripts, robots, scrapers, crawlers, or spiders);

9. Create any "derivative works" by altering any aspect of the Site, Content, BeenVerified Checks, or Member Services;

10. Use the Site, Content, BeenVerified Checks, or Member Services in conjunction with any other third-party content;

24. By visiting the website www.beenverified.com, Defendants falsely represented

that it agreed to the above conditions despite the fact that Defendants' motives for accessing www.beenverified.com was to misappropriate BeenVerified's copyrighted work, including images, text, designs, flow and source code.

25. At all times relevant to this Complaint, Defendants' representations were in fact false as Defendants' sole purpose for accessing www.beenverified.com was to copy, distribute and commercially exploit BeenVerified's webpages to BeenVerified's detriment.

26. Defendants knew the representations to be false and made the representations with the intent to deceive and defraud BeenVerified and to induce BeenVerified to act in reliance on the representations, thereby granting Defendants access to the website www.beenverified.com.

27. At all times relevant to this complaint, the BeenVerified's website www.beenverified.com has included the appropriate copyright notice "BeenVerified © [year] All Rights Reserved."

28. Currently, the copyright notice includes the year as 2018, however as the BeenVerified website has been updated and content added, appropriate notices are included with the relevant year.

29. For example, when viewing www.beenverified.com website in 2016, a viewer would have seen “BeenVerified © 2016 All Rights Reserved.”

30. Attached at Exhibit B are samples of a side by side comparison between pages of www.seekverify.com (Left side) and www.beenverified.com (Right side) that shows more than ten instances of Defendants copying all or substantial portions of Plaintiff’s copyrighted content.

31. Attached at Exhibit C is a side by side comparison of www.seekverify.com (Left side) and www.beenverified.com (Right side) website code which are substantially if not completely identical.

32. Attached at Exhibit D are code assets in the www.seekverify.com website which shows that Defendants did not even change the underlying folder “beenverified” and that Defendants continue to maintain code with “beenverified” in links to various images or web assets.

33. As shown in Exhibit E, the css file on the trial page is exactly the same between www.beenverified.com and www.seekverify.com.

34. Defendants also copied other pages as shown at Exhibit F-H.

35. Defendant DeWolf sold the flow and code to a third party, namely, Johan Fourie, a competitor of Plaintiff in the sum of \$7,380, as evidenced in the attached email exchange between Plaintiff and John Fourie under Exhibit I.

36. The organization and arrangement and flow of www.seekverify.com is substantially identical to www.beenverified.com at least because Defendants have copied BeenVerified's code, flow, images, assets and other creative works.

37. www.seekverify.com includes a copyright notice “© 2018 SeekVerify” and www.seekverify.com/terms states that PDV is the owner of all Content on its website, which constitutes a knowing and false representation by PDV that it is the owner of the content of the website despite the fact that much of or substantially all of the www.seekverify.com website content and code was taken from BeenVerified.

38. Sometime in 2016 or 2017, Defendants accessed www.beenverified.com and related pages thereon and copied page designs, the page flow, source code and re-used that material on its own website www.seekverify.com.

39. Defendants copied the flow and code from www.beenverified.com and sold the flow and code to a third party, namely, Johan Fourie in the sum of \$7,380.

40. Defendants are using BeenVerified's website content that is identical or substantially similar to much of BeenVerified's copyrighted website content. On information and belief, Defendants began offering their services on or after August 12, 2016.

41. Upon information and belief, by May 11, 2017, Defendants website went live.

42. And further upon information and belief, by May 11, 2017, Defendants had copied or used Plaintiff's copyrighted material, including website code, flow, photographs, website organization and design and text.

43. Upon information and belief, Defendants accessed www.beenverified.com on numerous occasions between August 2016 and September 2017.

44. A visitor to www.seekverify.com would be confused by the fact that the flow, appearance, arrangement, and overall user experience of www.seekverify.com is nearly the same if not identical to www.beenverified.com and such visitor would be confused and would be lead to believe that www.seekverify.com is affiliated or sponsored or the same as www.beenverified.com.

45. Furthermore, BEENVERIFIED and SEEKVERIFY are substantially similar such that a consumer would be confused that SEEKVERIFY products and services are that of and sponsored by BeenVerified.

46. Plaintiff markets its products and services under the brand BEENVERIFIED and began using BEENVERIFIED® as a trademark at least as early as 2007.

47. BEENVERIFIED was a coined term first created by Plaintiff for use in connection with its product and service offerings.

48. Plaintiff is the owner of the incontestable Federal Trademark Registration No. 3,810,615 for BEENVERIFIED & Design in Class 045 for Background investigation and research services; Providing an interactive website that facilitates the verification of a person's background credentials, and Plaintiff is the owner of incontestable Federal Trademark Registration No. 3,819,610 for BEENVERIFIED in Class 045 for Background investigation and research services; Providing an interactive website that facilitates the verification of a person's background credentials (the "Registrations"). The Registrations were duly registered by the US Patent and Trademark Office.

49. Plaintiff has continuously used its BEENVERIFIED® trademark since use began and has expended considerable resources promoting and advertising its brand.

50. As a result of Plaintiff's continuous use of Plaintiff's BEENVERIFIED® mark, the inherent distinctiveness, the extent and duration of its use, geographic scope, extent of our advertising and sales, media publicity, exposure of the mark and consumer recognition, Plaintiff's BEENVERIFIED® mark is famous in the industry.

51. Upon information and belief, Defendants adopted SEEKVERIFY in order to trade on the goodwill developed in BEENVERIFIED® by Plaintiff and has copied the BeenVerified website in order to assist in confusing consumers looking for BEENVERIFIED® to purchase SEEKVERIFY.

52. Upon information and belief, Plaintiff and Defendants are competitors and both Plaintiff and Defendants provide background searches, phone lookup, email lookup and other related services, all of which are similar if not identical.

53. Consumers of Plaintiff's and Defendants' products and services are not particularly careful as to which vendor is chosen and thus, are more likely to believe that SEEKVERIFY is affiliated with BeenVerified, especially considering that said consumers will interact with the two websites in nearly if not completely identical ways and consumers will also view nearly if not completely identical content.

54. Upon information and belief, Defendants' and Plaintiff's services travel through almost identical commercial channels and are targeted at the same or substantially overlapping customer groups because the services provided are directed to similarly situated consumers seeking similar data.

55. Upon information and belief, Plaintiff's and Defendants' services are supplied in the same or similar geographic areas, including the state of New York and the city of New York as well as throughout the United States.

56. Upon information and belief, Defendants' activities have caused and continue to cause irreparable injury to Plaintiff's reputation and goodwill.

57. Upon information and belief, Defendants has profited and continue to profit from its unlawful acts.

58. Defendants had notice of Plaintiff's inherent trademark rights and Plaintiff's Federal Trademark Registration rights prior to the inception of Defendants' companies.

59. The intentional and willful nature of Defendants' unlawful acts renders this an exceptional case.

60. Defendants have not merely misappropriated BeenVerified's website; they have also endeavored to duplicate BeenVerified's business in total, thereby unjustly capitalizing on BeenVerified's painstaking effort and entrepreneurship. From the smallest detail to the most prominent website pages, Defendants have tried to mimic BeenVerified in every possible way, using BeenVerified's own creative and original works.

61. These acts are among the many acts that reveal Defendants' scheme to misappropriate and unfairly exploit BeenVerified's intellectual property, website and overall business model for Defendants' benefit.

COUNT I
Copyright Infringement – 17 U.S.C. § 101 et seq

62. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

63. The contents of BeenVerified's website including the text, two-dimensional images, and arrangement of component parts that appear on the website are wholly original works that constitute copyrightable subject matter under the laws of the United States.

64. The contents of the BeenVerified website were created and/or authored by various

employees of BeenVerified and/or are owned by BeenVerified pursuant to contract or as works for hire. Accordingly, BeenVerified is the copyright owner of the BeenVerified website in whole and its component parts.

65. BeenVerified owns all right, title and interest in the BeenVerified website and each and every webpage and image featured therein. BeenVerified has applied for registration of the website source code with the U.S. Copyright Office with an expedited service request. A registration is expected to issue in due course. Exhibit J includes a copy of the application along with the U.S. Copyright Office confirmations. The deposit copy can be made available during discovery but is omitted from this filing due to the large size thereof.

66. BeenVerified has also applied for four separate copyright applications which include the creative works in the underlying website pages of BeenVerified that are found in Exhibits B and F-H (right side). The underlying applications deposit copies and Copyright Office confirmations are found at Exhibit K to this complaint and are arranged with the application as filed first and the deposit copy and confirmations after its corresponding application. Defendants have copied the source code, images, text and photographs found on BeenVerified's website, which are the exclusive and copyrighted property of BeenVerified.

67. BeenVerified has complied in all respects with the Copyright Act of 1976 and applied for registration of its website, content and underlying code.

68. BeenVerified has displayed appropriate copyright notices on its website.

69. Defendants are infringing the copyrights of BeenVerified's website by unlawfully reproducing, preparing derivative works, and publicly displaying, copying and even selling to third parties identical or substantially similar web content and code in violation of the U.S. Copyright Act. At no time has BeenVerified authorized Defendants to engage in such conduct.

COUNT II

Violation of the Digital Millennium Copyright Act 17 U.S.C. §§ 1201(a) & 1202(b)

70. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

71. To the extent discovery shows that Defendants have obtained access to member-restricted portions of the BeenVerified website for the purpose of infringing BeenVerified's copyright, such acts were done fraudulently and without authorization in violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201(a).

72. Defendants have, on information and belief, knowingly and with the intent to conceal infringement, provided false copyright management information on their website, www.seekverify.com, in violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1202(a).

73. Defendants have, on information and belief, intentionally removed and/or altered copyright management information provided on BeenVerified's website and passed BeenVerified's copyrighted material off as Defendants'.

74. On information and belief, Defendants removed and/or altered BeenVerified's copyright management information knowing or having reasonable grounds to know that such actions would conceal their infringements of BeenVerified's copyright.

75. On information and belief, Defendants' acts in violation of the Digital Millennium Copyright Act were and are willful.

76. By reason of Defendants' violations of the Digital Millennium Copyright Act, BeenVerified has sustained and will continue to sustain substantial injury, loss, and damage to its ownership rights in the copyrighted work.

77. Further irreparable harm to BeenVerified is imminent as a result of Defendants'

conduct, and BeenVerified is without an adequate remedy at law. BeenVerified is therefore entitled to an injunction, in accordance with 17 U.S.C. § 1203(b), restraining Defendants, their officers, directors, agents, employees, representatives, assigns, and all persons acting in concert with Defendants from engaging in further violations of the Digital Millennium Copyright Act and directing Defendants to destroy all copies of their website and content thereon.

78. BeenVerified is further entitled to recover from Defendants the damages sustained by BeenVerified as a direct and proximate result of Defendants' violations of the Digital Millennium Copyright Act. BeenVerified is at present unable to ascertain the full extent of the monetary damage it has suffered by reason of Defendants' acts.

79. BeenVerified is further entitled to recover from Defendants the profits that Defendants have obtained as a result of their violations of the Digital Millennium Copyright Act. BeenVerified is at present unable to ascertain the full extent of the gains, profits, and advantages Defendants have obtained by reason of their violations of the Digital Millennium Copyright Act.

80. At its election, and in lieu of Defendants' profits derived from their violations of the Digital Millennium Copyright Act and BeenVerified's actual damages, BeenVerified is entitled to recover statutory damages in accordance with 17 U.S.C. § 1203(c)(3).

81. BeenVerified is entitled to recover costs and attorneys' fees in accordance with 17 U.S.C. § 1203(b)(4) and (5).

COUNT III
Breach of Contract

82. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

83. Plaintiff's website is governed by the Terms & Conditions (Exhibit A).

84. The Terms & Conditions state that users of BeenVerified's website agree not to *inter alia*:

5. Directly or indirectly reproduce, create, compile, or incorporate any part of the Site including, but not limited to, Content, BeenVerified Checks, and Member Services, into any database, collection, compilation, directory, or information retrieval system, electronic or otherwise;
6. Use, copy, reproduce, record, retransmit, emulate, clone, sell, rent, lease, decompile, disassemble, reverse engineer, broadcast, distribute, publish, upload, post, publicly display, perform, digitize, compile, or translate any part of the Site, Content, BeenVerified Checks, Member Services, or other material posted to or made available by or through the Site for any commercial purpose or for any purpose that is competitive, in BeenVerified's sole discretion, to BeenVerified;
7. Access the Site through any automated or manual process for the purpose of monitoring the Site's performance, functionality, or availability for any commercial purpose;
8. Access, retrieve any data from, or otherwise perform any other activities on or through the Site using any type of software or other automated process (e.g., scripts, robots, scrapers, crawlers, or spiders);
9. Create any "derivative works" by altering any aspect of the Site, Content, BeenVerified Checks, or Member Services;
10. Use the Site, Content, BeenVerified Checks, or Member Services in conjunction with any other third-party content;

85. On information and belief, Defendants and/or their agents intentionally navigated to BeenVerified's website and may have signed up for a membership to BeenVerified's services for the sole purpose of flagrantly copying BeenVerified's website and unjustly capitalizing off of BeenVerified's investment in developing a user-friendly and profitable website. Defendants' content is substantially similar to BeenVerified's content, such that Defendants must have accessed BeenVerified's website in order to pilfer that content as well other portions of BeenVerified's website.

86. Defendants' website includes terms and conditions <https://seekverify.com/terms>

which prohibit users from: “use, copy, reproduce, record, retransmit, emulate, clone, sell, rent, lease, decompile, disassemble, reverse engineer, broadcast...any part of the Site, Content, SeekVerify Checks, Member Services, or other material posted to or made available by or though the Site...”

87. Therefore, upon information and belief, Defendant knew that such terms were typical in the industry and that BeenVerified would be reasonably expected to employ similar restrictions on use of its website as Defendant has enumerated.

88. Therefore, upon information and belief, Defendants knew or had reason to believe that their conduct violated BeenVerified’s Terms & Conditions.

89. Defendants’ and/or their agents’ assent to the Terms & Conditions by *inter alia* visiting www.beenverified.com and related pages constitutes a binding and enforceable contract between Defendants and BeenVerified.

90. Defendants have breached the Terms & Conditions by wholesale copying large swaths of BeenVerified’s website, duplicating that content on their website, www.beenverified.com, and exploiting that content for their own malicious commercial gain at the expense of BeenVerified.

91. At no time did Defendants have permission from BeenVerified to reproduce, duplicate, copy, sell, or other otherwise exploit any content of BeenVerified’s website.

92. BeenVerified fully performed each and every covenant, condition, and obligation to be performed by it under the contract.

93. As a direct and proximate result of Defendants’ breach of BeenVerified’s Terms & Conditions, BeenVerified has been and will be damaged by an amount to be determined in discovery, but which may include *inter alia* lost profits.

94. Defendants' breach of BeenVerified's Terms & Conditions has harmed and will continue to harm BeenVerified, causing it irreparable injury for which there is no adequate remedy at law unless enjoined by this Court.

COUNT IV
Unjust Enrichment

95. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

96. As a direct and proximate result of Defendants' misconduct and through affirmative actions and intentional omissions, as set forth above, Defendants' have been unjustly enriched.

97. Specifically, Defendants received substantial compensation derived from their fraudulent and unfair actions to the detriment and at the expense of BeenVerified and it would be unjust and unconscionable to permit Defendants to be enriched at BeenVerified's expense.

98. Furthermore, Defendants have unjustly been able to enter the market in competition with BeenVerified without engaging the substantial expense of design and web development and startup costs associated with designing, creating and developing the highly interactive and user-friendly website that BeenVerified developed.

99. By reason of the foregoing, BeenVerified seeks disgorgement of Defendants' profits, benefits, and other compensation obtained from the wrongful conduct described herein.

COUNT V
Common Law Fraud

100. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

101. By accessing BeenVerified's site and thereby agreeing to the BeenVerified Terms & Conditions, Defendants and/or their agents falsely promised and represented to BeenVerified that they were customers and that they would not reproduce, duplicate, copy, sell, or otherwise exploit for any commercial purpose any portion of the BeenVerified website.

102. These promises and representations by Defendants were in fact false, in that Defendants' sole purpose for accessing BeenVerified's website was to duplicate, copy, sell, and/or otherwise exploit for commercial advantage the contents of BeenVerified's website.

103. At the time Defendants and/or their agents made these false promises and misrepresentations to BeenVerified, they knew them to be false and misleading, and they made the promises and representations with the intent to deceive and defraud BeenVerified and to induce BeenVerified to act in reliance with the misrepresentations.

104. At the time, BeenVerified was ignorant of the falsity of Defendants' promises and representations. In reliance on Defendants' assent to BeenVerified's Terms & Conditions and their affirmative promises and representations contained therein, BeenVerified was induced to grant Defendants access to the BeenVerified website. BeenVerified was justified in relying on Defendants' affirmative false promises and misrepresentation.

105. As a direct and proximate result of Defendants' fraudulent conduct, BeenVerified suffered lost business, which was misappropriated by Defendants by virtue of their fraudulent, deceitful, and unfair practices as described herein, and other damages actually and proximately caused by Defendants' fraudulent conduct.

106. Furthermore, Defendants have fraudulently misrepresented its website content to be original when in fact Defendant has stolen such content from BeenVerified.

107. Defendants conduct amounts to a false promises and intentional

misrepresentations, deceit, or concealment of material facts known to Defendants with the intention on the part of Defendants of thereby depriving BeenVerified of money and/or property, or otherwise causing BeenVerified injury. Defendants' actions are despicable and subjected BeenVerified to unjust hardship in conscious disregard of BeenVerified's rights, so as to justify an award of exemplary and punitive damages.

COUNT VI
Computer Fraud – 18 U.S.C. §1030 et seq.

108. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

109. BeenVerified is the owner and/or lessee of the data, computers, computer systems, computer programs, and/or computer network that operate and sustain the BeenVerified website and services offered thereon.

110. Defendants knowingly and intentionally accessed and without permission knowingly used, caused to be used or accessed BeenVerified's data, computers, computer systems, computer programs, and/or computer network (which are protected computers) in order to devise and/or execute a scheme to defraud and deceive BeenVerified and without BeenVerified's authorization.

111. Defendants knowingly and with the intent to defraud BeenVerified have access BeenVerified's protected computers without authorization and has obtained and copied BeenVerified's website and related code which use for any given year has a value far in excess of \$5,000.

112. BeenVerified has experienced a loss in excess of \$5,000 for each year Defendants utilized BeenVerified's information at least because Defendants' fraudulent and wrongful access

to BeenVerified computers have enabled defendants to offer competing services and divert revenue to Defendants through use of BeenVerified's carefully crafted and designed website which has cost BeenVerified substantial sums of money, time, effort and resources to develop and perfect.

113. Defendants had no reasonable grounds to believe that its access or copying of BeenVerified's materials was authorized at least because BeenVerified's website continuously and at the time of the copying by Defendants included appropriate copyright notices.

114. Defendants' conduct therefore violates 18 U.S.C. §1030 *et seq.*

COUNT VII
Federal Trademark Infringement

115. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

116. Defendants use of SEEKVERIFY for its services, which are identical to BeenVerified's Services, constitutes trademark infringement of BeenVerified's Registrations for BEENVERIFIED and gives rise to a likelihood of confusion, deception, and mistake among the public.

117. Upon information and belief, Defendant adopted and used the SEEKVERIFY name with the willful purpose and intent of misleading the public and trading upon the goodwill and reputation associated with Plaintiff's Registrations.

118. These acts violate the United States Lanham Act and constitute infringement of Plaintiff's registered trademark, in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114 *et seq.*

119. As a result of Defendants infringing activities, the public is likely to be and has already been confused, misled or deceived as to the source, origin or sponsorship of Defendants' services, and Plaintiff has suffered irreparable injury for which it has no adequate remedy at law.

120. Upon information and belief, as a direct and proximate result of Defendants' actions in misappropriating BeenVerified's trademark rights, BeenVerified will need to conduct a corrective advertising campaign to alleviate existing and ongoing future confusion in the marketplace, in an amount to be determined.

COUNT VIII
Trade Dress Infringement

121. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

122. Plaintiff's website includes displays that consumers of BeenVerified have become accustomed to seeing and which consumers associate with BeenVerified.

123. BeenVerified's website and styling and design is distinctive and unique.

124. BeenVerified's trade dress consists of the unique and creative website design and page flow which is distinctive and a non-functional combinations of elements including colors and color combinations, color hues, shape, graphics, font, font size, size, location and arrangement of the foregoing and a myriad of other features and details of BeenVerified's website. Exhibits A and F show but some examples of side by side comparisons between BeenVerified's trade dress (right side) and Defendants' infringing trade dress (left side).

125. Defendants' wrongful use of the above trade dresses in the manner described and shown is likely to cause confusion, to cause mistake, or to deceive customers and potential customers of the parties by suggesting an affiliation, connection or association of Defendants

with Plaintiff.

126. Defendants' action, as set forth above, constitute trade dress infringement in violation of the Lanham Act 15 U.S.C. §1125.

127. Upon information and belief, as a direct and proximate result of Defendants' actions in misappropriating BeenVerified's trade dress, BeenVerified has suffered actual damages in an amount yet to be determined, including but not limited to damages to Plaintiff's reputation, loss of good will, lost sales and revenues, diminution in the value of Plaintiff's business, and lost sales of Plaintiff's related services as a result of Defendants' infringing activities.

128. Upon information and belief, as a direct and proximate result of Defendants' actions in misappropriating BeenVerified's trade dress, BeenVerified will need to conduct a corrective advertising campaign to alleviate existing and ongoing future confusion in the marketplace, in an amount to be determined.

129. Upon information and belief, as a direct and proximate result of Defendants' actions in misappropriating BeenVerified's trade dress, Defendants have made gross sales (and profits thereon) from its wrongful activities as alleged herein, which belong in equity and should be turned over to Plaintiff, both as unjust enrichment from Defendants' wrongful acts, and/or as a measure of Plaintiff's damages.

130. Defendants' acts have caused and will continue to cause irreparable harm to Plaintiff unless restrained by this Court. BeenVerified has no adequate remedy at law. Accordingly, Plaintiff is entitled to an order enjoining and restraining Defendants, during the pendency of this action and permanently thereafter, from all use of features, pages, and of www.seekverify.com.

COUNT IX
False Designation of Origin

131. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

132. Defendants' use of the SEEKVERIFY name constitutes offering for sale and selling services in interstate commerce using false and misleading descriptions and representations of fact, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

133. Upon information and belief, Defendants adopted and used SEEKVERIFY with the knowledge that it was misleading, and deceptive, and with the intent to compete unfairly with Plaintiff and to misappropriate the goodwill of Plaintiff.

134. Defendants also passed off BeenVerified's website and code as their own despite the fact that Defendants or their agent copied BeenVerified's website and code.

135. Defendants' copying of BeenVerified's website also includes copying of customer testimonials and text and even such customers' likeness, thereby also violating rights of publicity that BeenVerified had licensed and secured at great expense.

136. Defendants' copying also includes copying of photographs embedded in BeenVerified's website, some of which are BeenVerified employees and likeness, thereby also violating rights of publicity that BeenVerified had licensed and secured at great expense.

137. Thus, not only is Defendant passing off BeenVerified's reviews as its own, Defendant is passing off BeenVerified employees as its own.

138. Such practices constitutes passing off and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

139. As a result of Defendants activities, the public is likely to be confused, misled, or

deceived about the sources of Defendants' services, and Plaintiff is now and will continue to suffer irreparable injury to its goodwill and reputation, for which it has no adequate remedy at law.

140. Upon information and belief, as a direct and proximate result of Defendants' actions, BeenVerified will need to conduct a corrective advertising campaign to alleviate existing and ongoing future confusion in the marketplace, in an amount to be determined.

COUNT X
Trademark Infringement – New York Common Law

141. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

142. This claim is against Defendants for common law trademark infringement.

143. In addition to the Federal Registration owned by Plaintiff, as set forth above, Plaintiff's BEENVERIFIED® mark enjoys common law rights in New York and throughout the United States. These rights are senior and superior to any rights which Defendants may claim.

144. Defendants' use of SEEKVERIFY is intentionally designed to mimic Plaintiff's BEENVERIFIED® mark so as to cause confusion regarding the source of Defendants' services in that purchasers thereof will be likely to associate or have associated such products with, as with originating with, or as approved by Plaintiff, all to the detriment of Plaintiff.

145. Defendants' infringement will continue unless enjoined by the Court.

146. Upon information and belief, as a direct and proximate result of Defendants' actions in misappropriating BeenVerified's trademark rights, BeenVerified will need to conduct a corrective advertising campaign to alleviate existing and ongoing future confusion in the marketplace, in an amount to be determined.

COUNT XI
Dilution

147. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

148. The BEENVERIFIED mark has become famous and distinctive throughout the United States and throughout the world through Plaintiff's continuous and exclusive use of the mark in connection with Plaintiff's services and goods.

149. Because Plaintiff's services have gained a reputation for excellence, the BEENVERIFIED mark, which is always used in connection with Plaintiff's services defined above, have gained substantial fame, renown, and goodwill in the United States and throughout the world.

150. Defendants' use of SEEKVERIFY as trademarks and registration of Defendants Domains has caused and continues to cause irreparable injury to and dilution of the BEENVERIFIED marks' distinctive quality in violation of Plaintiff's rights under 15 U.S.C. § 1125 (c). Defendants' use of SEEKVERIFY dilutes, blurs, tarnishes, and whittles away the distinctiveness of Plaintiff's BEENVERIFIED mark.

151. As a direct and proximate result, Plaintiff has suffered and continues to suffer irreparable harm to its valuable BEENVERIFIED mark. Unless the SEEKVERIFY names are removed from all signage and advertising, websites, content, and the Defendants Domains are transferred and/or forfeited to Plaintiff, Plaintiff will continue to be irreparably harmed.

152. Plaintiff has no adequate remedy at law that will compensate it for the continued and irreparable harm it will suffer if the signage and advertising is not removed and if the Domain Names are not transferred and/or forfeited to Plaintiff.

COUNT XII
False Advertising 41 U.S.C. §1125(a)(1)

153. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

154. Defendants' copying of BeenVerified's website also includes copying of customer testimonials and text, and said customers' likeness.

155. Defendants' copying also includes copying of photographs embedded in BeenVerified's website, some of which are BeenVerified employees.

156. Thus, not only is Defendant passing off BeenVerified's reviews as its own, Defendant is passing off BeenVerified employees as its own.

157. Furthermore, Defendants have included logos of MSNBC, MASHABLE, TECH CRUNCH and ABOUT.COM (See at least Exhibit B), thus representing that such companies have reviewed, praised or otherwise recognized Defendants in some way.

158. Upon information and belief, Defendants have received no endorsements, reviews, praise or recognition from such companies identified in the immediately preceding paragraph, but rather Defendants have flagrantly copied BeenVerified code which shows such logos due to the fact that such companies have recognized BeenVerified.

159. Thus, Defendants have knowingly and intentionally deceived consumers to believing that Defendant is both affiliated with BeenVerified and that MSNBC, MASHABLE, TECH CRUNCH and ABOUT.COM have recognized Defendants when both of the foregoing are false.

160. Upon information and belief, the review "via sitejobber.com" on the SeekVerify website is false.

161. The reviews found in the second page of Exhibit B (next to the three photos in green circles) are direct copies from BeenVerified reviews and Defendant published such reviews knowing them to be false.

162. These are but a few examples of Defendants' many false and misleading advertising practices which misrepresents the nature, characteristics or qualities of Defendants' goods and services and commercial activities in violation of 41 U.S.C. §1125(a)(1) which have caused damage to BeenVerified.

COUNT XIII
Deceptive Trade Practices – NY Gen. Bus. Law. §349

163. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

164. Defendants' copying of BeenVerified's website, code and related materials is unlawful and has allowed Defendant to compete against BeenVerified by piggybacking on BeenVerified's hard work and creativity.

165. Defendants have knowingly used, caused to be used and/or accessed BeenVerified's computers systems and platforms without authorization

166. To the extent discovery uncovers that Defendants have obtained an account to BeenVerified in order to further its copying scheme, such would be considered computer trespass.

167. Defendants have unlawfully duplicated BeenVerified's computer material without any right to do so and without any reasonable basis to believe that it was authorized.

168. Defendants conduct has wrongfully duplicated BeenVerified's computer material without right to do so in a manner that intentionally and wrongfully deprives or appropriates

economic value for BeenVerified in excess of \$2,500.

169. Therefore, defendant's conduct also violated NY PEN §156 *et seq* which is a deceptive act or practices within the meaning of NY Gen. Bus. Law. §349.

170. Defendants have also deceptively marked their website as being copyrights owned by Defendants despite the fact that Defendants knowingly and intentionally stole the underlying code and substantially all other materials from BeenVerified, which is also a deceptive act and practice.

171. The prior counts to the complaint herein allege further deceptive acts and practices of the Defendant which violate NY Gen. Bus. Law. §349.

COUNT XIV
Unfair Competition

172. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

173. Defendants' acts complained herein amount to a bad faith misappropriation of the labor, skill, expenditures and proprietary property of BeenVerified.

174. Defendants have *inter alia*: used a confusingly similar brand; copied BeenVerified's code, images, materials and website despite an agreement that it would not; violated criminal statutes; palmed off and even sold BeenVerified's code and creative works as their own; committed numerous frauds and criminal violations; and falsely labeled and advertised BeenVerified's reviews as their own.

175. At all times relevant to the Complaint, defendant's conduct was intentional and purposely directed at BeenVerified.

176. Such conduct was done in bad faith and amount to unfair actions by Defendants.

COUNT XV
Cancellation of TM Reg. No. 5,262,272

177. Plaintiff repeats and realleges the allegations contained in the prior paragraphs of this Complaint and incorporates them herein by reference.

178. Defendant is listed as the registration/owner of U.S. TM. Reg. No. 5,262,272 for SEEKVERIFY which as described above is likely to cause confusion, mistake or deception with Plaintiff's incontestable Registrations, which have both prior dates of use, application and registration as compared to defendant's SEEKVERIFY.

179. The services of U.S. TM. Reg. No. 5,262,272 for SEEKVERIFY are the same or substantially similar to those of BeenVerified's Registrations.

180. The continued registration of the above SEEKVERIFY registration is likely to cause confusion with Plaintiff's BEENVERIFIED trademark and Registrations and has and will continue to damage BeenVerified.

181. Defendant is using its registered mark so as to misrepresent the source of the services on or in connection with which the mark is used.

182. In showing use of Defendants' trademark in order to obtain the above registration for SEEKVERIFY, Defendant copied BeenVerified's code and website in order to show use of SEEKVERIFY, thus the act of showing use was predicated on a fraudulent act, showing that the registration was obtained fraudulently.

183. Therefore, BeenVerified requests this court cancel the SEEKVERIFY Reg. No. 5,262,272 in accordance with the Lanham Act including 15 U.S.C. §1119.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. An order immediately and permanently enjoining Defendants, its officers, members, agents, servants, employees, attorneys, and all persons in active concert or participating with any of them, from:

- i. copying or using any website materials, code, photograph, works or information of Plaintiff;
- ii. advertising, marketing, promoting, selling or otherwise offering for sale any good or service that is confusingly similar to Plaintiff's BEENVERIFIED mark, any derivation or colorable imitation thereof, or any mark confusingly similar thereto;
- iii. making or employing any other commercial use of Plaintiff's BEENVERIFIED mark, any derivation or colorable imitation thereof, or any mark confusingly similar thereto;
- iv. using any other false designation of origin or false description or representation or any other thing calculated or likely to cause confusion or mistake in the mind of the trade or public or to deceive the trade or public into believing that Defendants' services or activities are in any way sponsored, licensed or authorized by or affiliated or connected with Plaintiff;
- v. using SEEKVERIFY or BEENVERIFIED or BEEN VERIFIED or SEEK VERIFY as a keyword or metatag in any of its websites and domains;

- vi. doing any other acts or things calculated or likely to cause confusion or mistake in the mind of the public or to lead marketers, advertisers, purchasers or consumers or investors into the belief that the products or services promoted, offered, or sponsored by Defendants come from Plaintiff, or are somehow licensed, sponsored, endorsed, or authorized by, or otherwise affiliated or connected with Plaintiff;
- vii. otherwise competing unfairly with Plaintiff in any manner; and
- viii. operating Defendants' Domain SEEKVERIFY.COM, or any other domain that is a derivation or colorable imitation thereof, or any domain confusingly similar thereto, including domains that constitute typographical errors of SEEKVERIFY or BEENVERIFIED; and
- ix. assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in the above subparagraphs (i) through (vi), or effecting any assignments or transfers, forming new entities or associations, or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs (i) through (vi);

B. Direct Defendants to destroy each and every copy of all source code and materials and related backups and draft code in any way related to or used with www.seekverify.com or obtained from www.beenverified.com or otherwise from Plaintiff.

C. Direct Defendants and/or its domain registrar or hosting provider to transfer the Defendants Domain SEEKVERIFY.COM, and any other domain owned by Defendants that is a

derivation or colorable imitation thereof, or any domain confusingly similar thereto, including domains that constitute typographical errors of BEENVERIFIED, to Plaintiff.

D. That a judgment be entered that Defendant has infringed the Plaintiff's mark in violation of 15 U.S.C. § 1114 and has created a likelihood of confusion and damaged Plaintiff's goodwill.

E. That a judgment be entered that Defendant has unfairly competed with Plaintiff by the acts complained of herein in violation of in violation of 15 U.S.C. § 1125(a).

F. That a judgment be entered that the acts of Defendant constitute unfair competition and trademark infringement in violation of the common law of the State of New York.

G. That Defendant be ordered to account and pay Plaintiff all profits derived as a result of the activities complained of herein.

H. That Defendant be ordered to pay to Plaintiff damages sustained as a result of the activities complained of herein.

I. That Defendant be ordered to pay punitive damages.

J. That Defendant be ordered to pay increased damages due to its willful infringement.

K. That Defendant be ordered to pay Plaintiff's reasonable attorneys' fees and costs incurred in this action.

L. That the Court cancel U.S. TM. Reg. No. 5,262,272 for SEEKVERIFY and deliver the appropriate order or notice to the U.S. Trademark Office, Director of the Department of Commerce and/or Director of the U.S. Patent and Trademark Office as necessary to ensure

that the foregoing registration is in fact cancelled and removed from the U.S. Trademark Register.

M. That Plaintiff be awarded such other and further relief as may be contemplated by statute law and/or equity and such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: Stamford, Connecticut
March 9, 2018

ST. ONGE STEWARD JOHNSTON & REENS LLC

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